IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7771 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

P J KAPADIA

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 7771 of 1999

MRS SANGEETA N PAHWA for Petitioner No. 1

MR ANANT DAVE for Respondent No. 1

MS NANDINI JOSHI, AGP for Respondents No. 2-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 18/10/2001

ORAL JUDGEMENT

1. P.J.Kapadia, petitioner has filed this petition challenging the judgment and order dated 4th August, 1999, passed by the respondent No.1- District Primary

Education Officer, Nadiad, dismissing the petitioner from service and ordering for recovery of Rs.1,75,670.77 as being illegal, arbitrary, without application of mind and violative of Article 14 and 16 of the Constitution of India.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner was working as a teacher in Patel Zaverbhai Sankalbhai School for the last 30 years and the service record of the petitioner was neat and clean throughout. The petitioner states that the petitioner eventually became the Assistant Teacher in the aforesaid school and he was also given the charge of Chief Teacher whenever the Chief Teacher was on leave.

2.2 It has been stated in the petition that in August 1992 the Chief Teacher was on leave on account of ill-health and the petitioner was in charge of chief teacher. It has been further stated that the school in which the petitioner was serving as a teacher was recognised as Pay Centre for the purpose of disbursing the salary to the staff of 14 schools in the surrounding area. It has been further stated in the petition that in absence of the chief teacher the petitioner used to collect the cheque from Taluka Panchayat for the purpose of giving salary to the staff of 14 schools and he was also given the additional duty of helping the chief teacher for disbursement of salary.

2.3 It has been further stated that in the year 1992 as per the instructions of the chief teacher was on leave, the petitioner had in capacity of in-charge chief teacher collected the cheque of Rs.1,75,670.77 from the Taluka Panchayat towards the salary of the school teachers and staff, and at that time, the office of the respondents gave the work to the petitioner for collecting the salary and disbursing the same to the teachers.

2.4 The petitioner submits that since the petitioner was given the task of collecting the salary, the petitioner encashed the cheque from the bank and was walking towards the school carrying the aforesaid amount in cash. The petitioner submits that on the way to the school some unknown person was following behind the petitioner had threw some dirty things on the person of the petitioner. The petitioner submits that therefore the petitioner started losing his mental consciousness and that the said person took up the bag containing the

cash amount and ran away. The petitioner started shouting and as a result of which a crowd has assembled. Thereafter the petitioner filed a complaint for pilferage of the cash amount from his custody which was registered as C.R.No.414/92.

2.5 In view of the aforesaid incident, the respondent alleged negligence against the petitioner and a chargesheet was issued against the petitioner. In the said chargesheet, three charges were levelled against the petitioner which are as under:

(1) The petitioner has not taken due care and caution in discharge of his duties and that has resulted in this pilferage of cash.

(2) The petitioner had not taken another teacher of the school alongwith him for collecting the money which was required as per the rules. The petitioner has, thus, neglected in discharge of his duties.

(3) The chief teacher of the school was on leave for four days and the petitioner in undue haste had gone to collect the money and thus, he has neglected in discharge of his duties.

2.6 Thereafter the petitioner was suspended by the respondent vide order dated 2.2.1992. Thereafter departmental inquiry was held against the petitioner and the charges were held to be proved and by the impugned order dated 4.8.99 the respondent No.1 dismissed the services of the petitioner and also ordered for recovery of Rs.1,75,670.77.

2.7 Being aggrieved and dissatisfied with the aforesaid order, the petitioner filed the present petition before this Court somewhere on 5th October, 1999.

3. When the matter was placed for hearing before this court, this Court (Coram: Rajesh Balia, J.) on 6.10.99 has issued Rule made returnable and also issued notice as to interim relief.

4. The respondent has also filed affidavit in this behalf. It is the contention of the respondent that if petitioner is directed to pay the said amount, the

authority is prepared to consider his case for reinstatement.

5. I have heard Ms.Pahwa, learned advocate for the petitioner Mr.Pahwa, Mr.Anant Dave, learned advocate for the respondent No.1 - District Primary Education Officer and Ms.Nandini Joshi, learned AGP for the State.

6. I have gone through the evidence on record. It has been contended that in view of the facts and circumstances of the case there cannot be misconduct or negligence on the part of the petitioner and therefore the order of dismissal is liable to be quashed and set aside. In my view, looking to the facts and circumstances of the case and looking to the judgment reported in AIR 1979 SC 1022 the negligence in discharging of duties is not a misconduct.

7. In view of the same, the order passed by the authority dismissing the petitioner from service is liable to be quashed and set aside. The respondent authority is directed to reinstate the petitioner with all retirements benefits and backwages. However as regards payment of Rs.1,76,000/- for recovery is concerned, I direct the petitioner to pay Rs.90,000/to the authority in this behalf and thereafter the authority will try to pay pension, gratuity and other retirement benefits to the petitioner in this behalf. The respondent authority will adjust the payment of backwages against Rs.90,000/- for the said recovery.

8. In view of the aforesaid directions, this petition stands disposed of accordingly with no order as to costs. Rule is made absolute to the aforesaid extent.

(K.M. Mehta, J.)

syed/